

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BRIAN JENNINGS,

Plaintiff,

v.

SAN DIEGO JAIL HEALTH CARE
PROVIDERS, JUSTIN POLANCO M.D.
and DOCTOR GOLDSTEIN, *et al.*,

Defendants.

Civil 15cv890 LAB (BGS)
No.

**ORDER DENYING PLAINTIFF'S
MOTION TO APPOINT COUNSEL
WITHOUT PREJUDICE**

[ECF No. 14.]

On November 30, 2015, Plaintiff Brian Jennings, a prisoner proceeding *pro se* and *In Forma Pauperis* ("IFP") in this civil rights action, filed a motion to appoint counsel. (ECF No. 14.) He requests appointment of counsel because he is indigent and cannot afford to hire a lawyer. *Id.* at p.1.

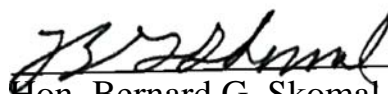
"There is no constitutional right to appointed counsel in a § 1983 action." *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997) (citing *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981)); see also *Hedges v. Resolution Trust Corp. (In re Hedges)*, 32 F.3d 1360, 1363 (9th Cir. 1994) ("[T]here is no absolute right to counsel in civil proceedings.") (citation omitted). Federal courts do not have the authority "to make coercive appointments of counsel." *Mallard v. United States District Court*, 490 U.S. 296, 310 (1989); see also *United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995).

Districts courts have discretion, however, pursuant to 28 U.S.C. § 1915(e)(1), to "request" that an attorney represent indigent civil litigants upon a showing of

1 “exceptional circumstances.” *See Agyeman v. Corrections Corp. of America*, 390 F.3d
2 1101, 1103 (9th Cir. 2004); *Rand*, 113 F.3d at 1525. “A finding of the exceptional
3 circumstances of the plaintiff seeking assistance requires at least an evaluation of the
4 likelihood of the plaintiff’s success on the merits and an evaluation of the plaintiff’s
5 ability to articulate his claims ‘in light of the complexity of the legal issues involved.’”
6 *Agyeman*, 390 F.3d at 1103 (*quoting Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th
7 Cir. 1986)); *see also Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991).

8 The Court denies Plaintiff’s request without prejudice, as neither the interests of
9 justice nor exceptional circumstances warrant the appointment of counsel at this time.
10 *LaMere v. Risley*, 827 F.2d 622, 626 (9th Cir. 1987); *Terrell*, 935 F.2d at 1017. Plaintiff
11 has thus far been able to articulate his claims, as the Court found that Plaintiff’s
12 complaint contains allegations sufficient to survive the sua sponte screening required by
13 28 U.S.C. §§1915(e)(2) and 1915A(b). (*See* ECF No. 4.) Moreover, it does not appear
14 that the legal issues presented by Plaintiff’s Eighth Amendment and Fourteenth
15 Amendment claims are so complex that counsel is warranted at this stage of the
16 proceedings. *See Wilborn v. Escalderon*, 789 F.3d 1328, 1331 (9th Cir. 1986) (noting
17 that, “[i]f all that was required to establish successfully the complexity of the relevant
18 issues was a demonstration of the need for development of further facts, practically all
19 cases would involve complex legal issues.”). Accordingly, Plaintiff’s motion is
20 **DENIED** without prejudice.

21 DATED: December 30, 2015

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24 Hon. Bernard G. Skomal
25 U.S. Magistrate Judge, U.S. District Court
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